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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,781	01/03/2002	Kanemitsu Yamaoka	217957US0	8557
22850	7590	04/14/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/033,781	Applicant(s) YAMAOKA ET AL.	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-2 in the response of February 11, 2004 is acknowledged. The traversal is on the ground(s) that there would be no burden in searching both groups, and that no reasons/examples were provided. This is not found persuasive because groups I and II possess different classifications: class 426/315 and class 73/19.02 respectively. Also, groups I and II are directed to totally different inventions, as pointed out in the restriction.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 3-4 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 2 recites "metmyoglobin formation to an extent near to that of an untreated tuna meat". It is not clear what level of metmyoglobin would be considered "near to that of an untreated tuna meat".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 08168537A in view of Shaklai [Pat. No. 6,270,829] and Kowalski [Pat. No. 5,972,401]. JP 08168537A teaches a method of preserving tuna by repeatedly inserting smoke-injection needles into tuna meat, injecting smoke bubbles, and removing the needles (page 2, claim 1). JP 08168537A does not recite a carbon monoxide concentration of 1100-2400 mg/kg and storage at about -18°C for months. Kowalski teaches a method of preserving tuna by treating it with carbon monoxide (column 11, lines 20-37) and storage at -20°C for up to a year (column 15, lines 33-37). Shaklai teaches a method of preserving fish by treating with carbon monoxide at a concentration of 65-1300 mg/kg (column 8, lines 5-9). It would have been obvious to one of ordinary skill in the art to incorporate the storage conditions of Kowalski into the invention of JP 08168537A since both are directed to methods of preserving tuna, since JP 08168537A already included freezing temperatures (page 28, lines 5-10), and since tuna was commonly stored at

about -18°C for months at a time, as shown by Kowalski (15, lines 33-37). It would have been obvious to one of ordinary skill in the art to incorporate the carbon monoxide concentration of Shaklai into the invention of JP 08168537A since both are directed to methods of preserving fish, since JP 08168537A already included the application of smoke which inherently contained carbon monoxide (page 2, claim 1), and since Shaklai teaches that fish treated with this amount of carbon monoxide possessed improved color and quality (column 8, lines 5-30).


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP 05317000A, JP 363160564A, JP 405308923A, Shih et al [Pat. No. 6,331,322], Woodruff et al [Pat. No. 4,522,835], Hood [Pat. No. 4,089,983], and Hood [Pat. No. 4,001,446] teach methods of preserving fish with carbon monoxide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
Art Unit 1761

4-8-04